



Idaho Judges' Benchcards for Child Protection Cases

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September 21, 2007

Order for Removal of Child

Idaho Code § 16-1611

Purpose

To determine if the summons in a CPA case should include an authorization directing law enforcement to take custody of the child and place the child in the custody of IDHW pending a shelter care hearing. Idaho Code § 16-1611(5); IJR 34

When

When a CPA petition is filed.

State Law Requirements

Idaho Code § 16-1606(d)

The judge may order removal of a child at the time of service of summons if:

- ✓ it appears that the child is within the jurisdiction of the CPA. (A child is within the jurisdiction of the CPA if the child is abandoned, abused, neglected, homeless, lacks a stable home environment, or is the sibling of such a child living in or having custodial visitation in the same household. Idaho Code § 16-1603.)
- ✓ it is contrary to the welfare of the child to remain in the home and vesting custody with IDHW would be in the child's best interest. Idaho Code § 16-1611(4)
- ✓ the determination must be made based on facts presented to the court (by testimony or affidavit)

Best Practice Recommendation:

If it appears that the child is within the jurisdiction of the CPA but it is not in the best interest of the child to be removed from the home, the court should consider whether a protective order pursuant to Idaho Code § 16-1611(5) would aid in protecting the child (the order must be specific as to each parent if the child is in joint custody).

Federal Law Requirements

ASFA 45 CFR 1356.21(b)(1), (c) & (d)

- ✓ Best Interest / Contrary to the Welfare -- If an order for removal of child is issued, it will be the first order sanctioning removal of the child from the home. In the *first order* sanctioning removal from the home, the court must make a finding that removal of the child is in the **child's best interest** or that it is **contrary to the welfare of the child** to remain in the home.
 - The finding must be **case-specific** and **documented** in the order. The finding can incorporate by reference an affidavit that describes the specific circumstances.
 - **If the finding is not made, the child will not be eligible for federal funds, and the omission cannot be corrected at a later date to make the child eligible.**

Best Practice Recommendations:

- ✓ For the Order for Removal of Child, use the form provided in the Benchguide, or found on the Idaho Supreme Court's website: www2.id.us/judicial/material.htm.
- ✓ Require the petitioner to file a supporting affidavit that includes the facts supporting the determinations of jurisdiction, best interest, and reasonable efforts, which can be incorporated by reference in the court's order.

Blank



Shelter Care Hearing

Idaho Code § 16-1615; IJR 39

September 21, 2007

Purpose

- ✓ To decide whether there is reasonable cause to believe that the child is within the jurisdiction of the CPA. (A child is within the jurisdiction of the CPA if she/he is the victim of abuse, neglect, abandonment, lacks a stable home environment, is homeless or is the sibling of such a child and is living or having custodial visitation in the same household.) Idaho Code § 16-1603; IJR 39.
- ✓ If YES, to decide if it is in the child's best interest to remain in the home or to be placed in a place of shelter care pending the adjudicatory hearing.

Best Practice Recommendation:

Open the hearing by explaining its purpose in plain language.

- ✓ Within 48 hours (excluding weekends and holidays) after the child has been removed from the home. Idaho Code § 16-1608(2).
- ✓ OR within 24 hours (excluding weekends and holidays) after the alleged offender has been removed from the home. Idaho Code § 16-1608(3).

Best Practice Recommendation:

Avoid **continuances** if at all possible. If a continuance must be granted, the Court should consider whether it is the **first order sanctioning removal of the child from the home**. If so the **federal "contrary to the welfare/best interest" finding must be made**. If the continuance order mentions or refers to custody of the child it will be deemed to be the first order of removal. *See below*.

- ✓ Judge
- ✓ Parents whose rights have not been terminated, including putative fathers

Best Practice Recommendations:

- ✓ Determine whether further efforts are needed to identify, locate, and serve missing parent(s), including putative fathers. (Idaho Code § 16-1609(1)(c) requires notice to each parent.) If notice has been given and a parent does not appear, ensure that this is documented in the file and make appropriate findings in the shelter care order.
- ✓ Order paternity testing where appropriate.

- ✓ Child's guardian or other legal custodian, if applicable
- ✓ Assigned caseworker
- ✓ Child's tribal cCustodian, tribe, and tribal attorney

Best Practice Recommendation:

Determine whether further efforts are needed to ascertain whether the child is an Indian child and/or whether further efforts are needed to give notice as required by the Indian Child Welfare Act, 25 U.S.C. §§ 1901, *et seq.* If notice has been given and the tribe does not appear, ensure that there is an affidavit of service in the file and make appropriate findings in the shelter care order.

Who Should Be Present

Who Should Be Present

(Con't.)

- ✓ County Prosecutor or Deputy Attorney General
- ✓ Attorney for parents (separate attorneys if conflict warrants)
- ✓ Guardian *ad litem*, attorney for guardian *ad litem*, and/or attorney for child
- ✓ Age-appropriate child
- ✓ Court Reporter or suitable technology
- ✓ Security personnel
- ✓ Interpreter(s), if applicable

Appointments

- ✓ Appoint counsel for indigent parents if not already done. IJR 37(4).
- ✓ Appoint GAL for child, attorney for GAL and/or attorney for child. Idaho Code § 16-1614; IJR 37(1) – (3).

Best Practice Recommendation:

Make these appointments upon the filing of the CPA petition.

Federal Law Requirements

45 CFR 1356.21 (b)(1), (c) & (d)

- ✓ Is the child an Indian child? If so, consult ICWA requirements (*see* ICWA Benchcard).
- ✓ Best Interest/Contrary to the Welfare
 - If this is the *first order* sanctioning removal of the child from the home, the court must make a finding that removal of the child is in the **child's best interest** or that it is **contrary to the welfare of the child** to remain in the home.
 - The finding must be **case-specific** and **documented** in the order. The finding can incorporate by reference an affidavit that describes the specific circumstances.
 - **If this finding is not made in the first order of removal, the child will not be eligible for federal IV-E or adoption funds, and the omission cannot be corrected at a later date to make the child eligible.**
- ✓ Reasonable Efforts
 - The Court must make a finding that IDHW either did, or, did not make **reasonable efforts to prevent removal of the child** from the home.
 - If the child was removed under **circumstances posing an imminent danger**, the court must find that the **department made reasonable efforts to prevent removal but was not able to safely provide preventive services.**
 - The finding must be made **within 60 days after removal** of the child from the home.

Best Practice Recommendation:

This finding should be made at the earliest opportunity, which may be the shelter care hearing

- The finding must be **case-specific** and **documented** in the court order. The finding can incorporate by reference an affidavit that describes the specific circumstances.
- **If this finding is not made within 60 days after the child's removal from the home, the child will not be eligible for federal funds, and the omission cannot be corrected at a later date to make the child eligible.**
- ✓ Stipulations – “Best Interest/Contrary to the Welfare” and “Reasonable Efforts” findings **must still be made.**





Shelter Care Hearing

State Law Requirements

- ✓ Findings – Prior to ordering that a child be placed in temporary shelter care, the court must make the following findings:
 - A CPA Petition has been filed.
 - There is reasonable cause to believe that the child is within the jurisdiction of the CPA.
 - IDHW made reasonable efforts, but they were not successful in eliminating the need for placement of the child in shelter care OR the department made reasonable efforts to prevent removal but was not able to safely provide preventive services.
 - The child cannot be placed in the temporary sole custody of a parent having joint legal or physical custody.
 - A protective order would not be sufficient to safeguard the child's welfare while allowing the child to remain in the home.
 - It is contrary to the welfare of the child to remain in the home, and/or it is in the best interest of the child to be placed in or remain in temporary care pending the adjudicatory hearing.

Best Practice Recommendations:

- ✓ For the shelter care order, use the form on the Idaho Supreme Court's website: <http://www.isc.idaho.gov/childapx.htm> .
- ✓ If the order is entered based on the agreement of the parties, determine whether the agreement was entered into knowingly and voluntarily and whether it has a reasonable basis in fact. (If the stipulation is to dismiss, inquire whether there has been adequate investigation.)
- ✓ If the child is to be placed in temporary shelter care, inquire as to whether IDHW's placement is the least disruptive and most family-like setting that meets the needs of the child.
- ✓ If a child is placed in the custody of the agency, IDHW decides where to place the child, subject to judicial review. Under both state and federal law, there are substantial questions as to the nature and extent of that review. Please refer to the *Idaho Child Protection Manual* (which can be found on the Idaho Supreme Court's website: <http://www.isc.idaho.gov/childapx.htm>) for more information.
- ✓ A child may not be placed out-of-state without a court order. The court should require that any out-of-state placement be made in accordance with the Interstate Compact on the Placement of Children, Idaho Code §16-2101, *et seq.* Refer to the *Idaho Child Protection Manual* (which can be found on the Idaho Supreme Court's website) for more information.
- ✓ Enter protective orders as appropriate (protective orders must be issued within 24 hours after the hearing).
- ✓ Enter orders as needed to ensure the progress of the case and to prepare for the next hearing.



Purpose →

- ✓ Phase I: Adjudication.
 - To decide whether the child is within the jurisdiction of the CPA. Idaho Code § 16-1619(4); IJR 41(1). A child is within the jurisdiction of the CPA if the child is abandoned, abused, neglected, homeless, lacks a stable home environment, or is a sibling of such a child and is living or having custodial visitation in the same household. Idaho Code § 16-1603.
 - If the petition alleges aggravated circumstances, to determine if the parent(s) subjected the child to aggravated circumstances. If aggravated circumstances are found, then reasonable efforts to reunify are not required. Idaho Code § 16-1619(6)(d); IJR 41(1).
- ✓ Phase II: Disposition. If the child comes within the jurisdiction of the CPA, to decide if the child should be placed in the legal custody of IDHW or in the child's own home under IDHW supervision. Idaho Code 16-1619(5)(a)&(b).

Best Practice Recommendation:

Open the hearing by explaining the purpose of the hearing in plain language.

When →

- ✓ No more than 30 days after the Petition is filed. Idaho Code § 16-1619(1).
- ✓ A pretrial conference must be held within 3-5 days prior to the Adjudicatory Hearing. Idaho Code § 16-1619(2).
- ✓ No later than 60 days after the child is removed from home, if the "reasonable efforts to prevent placement" finding required by federal law has not already been made. See "Federal Law Requirements" below; IJR 41(2).

Best Practice Recommendations:

- Grant continuances only when absolutely necessary, only for a short time, and subject to appropriate orders to ensure that the parties will be ready to proceed on the next court date.
- Incarceration should not be a basis for continuance – the court can enter a transport order or arrange for the party to appear by phone.
- NEVER continue more than 60 days after the date the child was removed from the home, unless the "reasonable efforts to prevent placement finding" has already been made.

Who should be Present →

- ✓ Judge
- ✓ Parents whose rights have not been terminated, including putative fathers
- ✓ Relatives with legal standing and other custodial adults
- ✓ The child's tribal custodian, tribe, and tribal attorney, if applicable
- ✓ Assigned IDHW caseworker
- ✓ County Prosecutor or Deputy Attorney General
- ✓ Attorney for parents (separate counsel if conflict warrants)
- ✓ Guardian ad litem, attorney for guardian *ad litem*, and/or attorney for child
- ✓ Age-appropriate child
- ✓ Court reporter or suitable technology, security personnel, and interpreter(s), if applicable

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Adjudicatory Hearing: Phases I & II

Evidentiary Issues

- ✓ Phase I (Adjudication): The standard of proof is preponderance of the evidence, the rules of evidence apply, and the reports of the GAL and IDHW may not be considered. Idaho R. Evid. 101, Idaho Code §§ 16-1619(4), 16-1616(3) 16-1633(2).
- ✓ Phase II (Disposition): The court may consider any relevant information, including the GAL and IDHW reports.

State Law Requirements

- ✓ Phase I Findings –
 - Is the child within the jurisdiction of the CPA pursuant to Idaho Code § 16-1603? If so, the court must enter a decree and include, on the record, findings of fact and conclusions of law as to the basis for jurisdiction in the decree. Idaho Code § 16-1619(4) & (6).
 - If the petition alleges aggravated circumstances, did the parent(s) subject the child to aggravated circumstances? (Aggravated circumstances are defined at Idaho Code § 16-1619(6)(d)).
- ✓ Phase II Findings –
 - If the child comes within the jurisdiction of the CPA, should the child be placed in the legal custody of IDHW or in the child's own home under agency supervision? Idaho Code §16-1619(5)(a)&(b)
 - If the child is placed in the custody of IDHW, the court must make detailed written findings based on facts in the record as to the child's best interest and reasonable efforts to prevent placement in foster care.
 - With respect to the best interest finding, the court must find that:
 - It would be in the child's best interest to be placed in state custody.
 - It would be contrary to the welfare of the child to remain in the home.
 - With respect to the reasonable efforts finding, the court must find that:
 - Reasonable efforts were made but were not successful in eliminating the need for placement of the child in foster care, OR
 - The department made reasonable efforts to prevent removal but was not able to safely provide preventive services, OR
 - Reasonable efforts to temporarily place the child with related persons were made but were not successful OR
 - Reasonable efforts were not required because the parent(s) subjected the child to aggravated circumstances.
 - Is it in the best interest of the child to enter a protective order? If so, the terms and conditions of the order must be stated in the decree.

Practice Note:

When the court places a child in state custody or under supervision, the order remains in effect until the child turns eighteen, unless the court modifies the order or terminates the case. The CPA provides for regular review by the court, to enable timely modification as appropriate under the circumstances of the individual case. Idaho Code § 16-1622.

Federal Law Requirements

- ✓ Indian Child Welfare Act – Is the child an Indian Child (a member or eligible for membership in an Indian Tribe)? **If yes, see ICWA Benchcard.**
- ✓ Best Interest / Contrary to the Welfare – If this is the first order sanctioning removal of the child, the court must make a finding that removal of the child is in the child's **best interest** or that it is **contrary to the welfare** of the child to remain in the home.
 - The finding must be **case-specific** and **documented** in the order. The finding can incorporate by reference an affidavit that describes the specific circumstances.
 - **If the finding is not made, the child will not be eligible for federal IV-E or adoption assistance funds, and the omission cannot be corrected at a later date to make the child eligible.**
- ✓ Reasonable Efforts – Unless the court has determined that the parent(s) subjected the child to aggravated circumstances, it must make a finding that IDHW either made, or did not make **reasonable efforts to prevent removal** of the child from the home.
 - The finding must be made **within 60 days after removal** of the child from the home. Recommended best practice is to make the finding at the earliest opportunity, so the finding may have been made at the endorsement on summons or at the shelter care hearing. If not, it must be made at the adjudicatory hearing.
 - The finding must be **case-specific** and **documented** in the court order. The finding can incorporate by reference an affidavit that describes the specific circumstances.
 - **If this finding is not made within 60 days after the child's removal from the home, the child will not be eligible for federal IV-E funds, and the omission cannot be corrected at a later date to make the child eligible.**
 - If the child was removed under circumstances posing an imminent danger, the court must find that the efforts to prevent the child's removal from his/her home were reasonable given that the department's assessment accurately determined that no preventive services could be safely provided.

Best Practice Recommendations:

- ✓ For the decree and order, use the form provided in the Benchguide or found on the Idaho Supreme Court's website: <http://www.isc.idaho.gov/childapx.htm>.
- ✓ Agreements of the parties:
 - determine whether the agreement was entered into knowingly and voluntarily, including sufficient facts for the case-specific findings of the basis for jurisdiction, best interest, and reasonable efforts.
 - If the stipulation is to dismiss, inquire whether there has been adequate investigation.
- ✓ If the child is to be placed in the custody of IDHW:
 - inquire as to whether IDHW's placement is the least disruptive and most family-like setting that meets the needs of the child.
 - IDHW decides where to place the child, subject to judicial review. Under both state and federal law, there are substantial questions as to the nature and extent of that review. Please refer to the Idaho Child Protection Manual (which can be found on the Idaho Supreme Court's website) for more information.
- ✓ Inquire as to the health/medical needs of the child.
- ✓ Inquire as to the educational needs of the child (see Educational Needs Benchcard).

(con't.)





Adjudicatory Hearing: Phases I & II.

Best Practice Recommendations: (con't.)

- ✓ A child may not be placed out-of-state without a court order. Idaho Code § 16-1629(8). The court should require that any out-of-state placement be made in accordance with the Interstate Compact on the Placement of Children, Idaho Code §16-2101-2108. Please refer to the Idaho Child Protection Manual (which can be found on the Idaho Supreme Court's website) for more information.
- ✓ If the child is to be placed in the child's own home under agency supervision, determine the terms and conditions needed to ensure the child's safety and welfare in the home.
- ✓ Determine whether further efforts are needed to join essential parties.
- ✓ Determine whether further efforts are needed to ascertain whether the child is an Indian child, and/or whether further efforts are needed to give notice as required by the Indian Child Welfare Act. 25 USC §§1901 et seq. If notice has been given and the tribe did not appear, ensure that there is an affidavit of service in the file, and make appropriate findings in the decree.
- ✓ Determine whether further efforts are needed to identify, locate, and serve missing parent(s), including putative fathers. (Idaho Code § 16-1611(3) requires notice to each parent.) If notice has been given and a parent did not appear, ensure that this is documented in the file and make appropriate findings in the decree. Order paternity testing where appropriate to establish parentage.
- ✓ Schedule the next hearing. Document that notice of next hearing was given to parties and appropriate participants.
- ✓ If aggravated circumstances were found: Schedule the permanency hearing. *See* Idaho Code § 16-1619(6)(d) and 16-1620). Order the assigned caseworker and the GAL to attend. Order IDHW to prepare, file, and serve a permanency plan at least five days prior to the permanency hearing.
- ✓ If aggravated circumstances were not found: Schedule the case plan hearing. *See* Idaho Code § 16-1621. Order the parents, the assigned caseworker, and the GAL to attend.
- ✓ Order IDHW to prepare, file, and serve a case plan at least five days prior to the case plan hearing. Require IDHW to notify the foster parents of the hearing.
- ✓ The court may also order the GAL to file a written report.
- ✓ Enter orders as needed to ensure the progress of the case and to prepare for the next hearing.
- ✓ Identify services to be provided by IDHW to the child and/or the parents pending the case plan or permanency hearing.
- ✓ Set terms for visitation (both parent and SIBLING visitation) and child support, as appropriate.
- ✓ Enter transport orders to the hearing for parents or children in state or local custody.
- ✓ Address the potential for mediation.



Purpose

- ✓ To decide whether to approve, modify, or reject the case plan when a child has been determined to be within the jurisdiction of the CPA, and aggravated circumstances have not been found. Idaho Code §16-1621(1) & (4); IJR 44.
- ✓ The purpose of the case plan is to 1) provide a framework for the systematic analysis of all issues that need to be addressed and a detailed “road map” for the prompt, successful, and permanent resolution of the case, either through reunification or alternative permanent placement; 2) provide a mechanism for holding the participants accountable; and 3) define “reasonable efforts” to finalize the permanent placement of the child (including reasonable efforts to reunify the family). IJR 44(1).

Best Practice Recommendations:

- ✓ Open the hearing by explaining the purpose of the hearing in plain language.
- ✓ If significant changes are later made in the plan, IDHW should schedule a new Planning hearing to seek approval of the changed plan.

When

- ✓ Within 5 days after the filing of the case plan. The case plan must be filed within 30 days after the adjudicatory hearing or within 60 days after the child is removed from the home, whichever occurs first. Idaho Code § 16-1621(1); IJR 44(1).

Best Practice Recommendations:

- ✓ Grant continuances only when absolutely necessary, only for a short time, and subject to appropriate orders to ensure that the parties will be ready to proceed on the next court date.
- ✓ Incarceration should not be a basis for continuance – the court can enter a transport order or arrange for the party to appear by phone.

Who Should Be Present

- ✓ Judge
- ✓ Parents whose rights have not been terminated, including putative fathers
- ✓ Relatives with legal standing and other custodial adults
- ✓ The child’s tribal custodian, tribe, and tribal attorney, if applicable

Best Practice Recommendation:

If the child is an Indian child, consult the ICWA Benchcard

- ✓ Assigned IDHW caseworker
- ✓ County Prosecutor or Deputy Attorney General
- ✓ Attorney for parents (separate counsel if conflict warrants)
- ✓ Guardian *ad litem*, attorney for guardian *ad litem*, and/or attorney for child
- ✓ Age-appropriate children
- ✓ Court reporter or suitable technology, security personnel, and interpreter(s), if applicable

Practice Note:

Foster parents are entitled to notice and have a right to attend the planning hearing, but are not parties to the case.

January 24, 2007





Planning Hearing

Submission of Reports

- ✓ The written case plan must be filed no later than 60 days from the date the child was removed from the home or 30 days from the date of the adjudicatory hearing, whichever is first. Idaho Code §16-1621(1).
- ✓ The case plan must be delivered to the parents, legal guardians, and the guardian *ad litem* and/or attorney for the child.
- ✓ The case plan should be verified or in the form of an affidavit.

Best Practice Recommendations:

Guardian *ad litem* Report

- ✓ Court may require report to address some or all of planning hearing issues.
- ✓ If required, report should be filed and served on all parties 5 days before planning hearing .
- ✓ The GAL report should be verified or in the form of an affidavit.

The Case Plan

- ✓ Consultation: IDHW must consult with the parents and the GAL in preparing the case plan.
- ✓ Contents:
 - If the child is placed in the custody of IDHW, the plan should set forth reasonable efforts which will be made to make it possible for the child to return to his/her home and shall concurrently include a plan setting forth reasonable efforts to place the child for adoption, with a legal guardian, or in another approved permanent placement. Idaho Code § 16-1621(3).
 - The plan should identify the current foster care placement for the child, including a statement of why that placement is the least disruptive environment and most family-like setting that meets the needs of the child.
 - The plan should identify the services to be provided to the child and to the foster family, including services to identify and meet any special medical, educational, emotional, physical or developmental needs the child may have, to assist the child in adjusting to the placement, and/or to ensure the stability of the placement.
 - The plan should set forth what further efforts are needed to address any element of the case plan.
 - The plan must state with specificity the role of IDHW toward each parent. Idaho Code §16-1621(3).
- ✓ The reunification plan should:
 - Identify all the issues to be addressed before the child can safely be returned home without IDHW supervision.
 - *Specifically* identify the tasks to be completed by IDHW, each parent, or others to address each issue, including services to be made available by IDHW to the parents and in which the parents are required to participate and *deadlines* for completion of each task.
 - Identify terms of visitation with parents and with siblings, and order child support where appropriate.
 - Include measurable goals for the reunification of the child and parent(s).

The Case Plan

(con't.) →

- ✓ Concurrent Alternative Permanency Plan should:
 - Address all options for permanent placement of the child.
 - Address the advantages and disadvantages of each option, in light of the child's best interest.
 - Include recommendations as to which option is in the child's best interest.
 - Specifically identify the actions necessary to implement the recommended option, and deadlines for those actions.
 - Address options for maintaining the child's connection to his/her community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection.
 - Identify further investigation necessary to identify and/or assess other options for permanent placement, to identify actions necessary to implement the recommended placement, and to identify options for maintaining the child's significant connections.
 - Specifically define the role of IDHW toward each parent.

Practice Notes and Best Practice Recommendations:

- ✓ If a child is placed in the custody of IDHW, then IDHW decides where to place the child, subject to judicial review. Under both state and federal law, there are substantial questions as to the nature and extent of that review. It is clear, however, that the court may require IDHW to include the child's placement in the case plan and may reject a case plan that includes an inappropriate placement.
- ✓ A child may not be placed out-of-state without a court order. The court should require that any out-of-state placement be made in accordance with the Interstate Compact on the Placement of Children. Idaho Code § 16-2101, *et seq.*
- ✓ The Indian Child Welfare Act (25 USC 1901, *et seq.*) establishes preferences in placement for Indian children. If the child is an Indian child, the case plan should include information demonstrating that the placement complies with ICWA.
- ✓ Please refer to the Idaho Child Protection Manual (which can be found on the Idaho Supreme Court's website) for more information about judicial review of agency placement decisions and compliance with the ICPC and ICWA.

Order →

- ✓ The plan, once approved (or approved with modifications), must be entered into the record as an order of the court. Idaho Code § 16-1621(4).





PLANNING HEARING

Best Practice Recommendations:

- ✓ For the case plan order, use the form provided in the Benchguide or found on the Idaho Supreme Court's website: <http://www.isc.idaho.gov/childapx.htm>.
- ✓ If the disposition at the adjudicatory hearing was to place the child in the child's own home under the supervision of IDHW, it is not clear whether the statute requires a case plan and a planning hearing. Recommended best practice is for the court to require it, so there is a detailed plan to promote and ensure successful resolution, and an alternative plan if protective supervision proves insufficient.
- ✓ In the case plan, SPECIFICITY IS EVERYTHING: it provides the road map to successful resolution of the case, it provides the primary mechanism for holding the participants accountable, and it defines "reasonable efforts."
- ✓ Stipulations: Do not approve the case plan based solely on the stipulation of the parties. Review the plan to ensure that it is complete and specific.
- ✓ ISSUE WARNINGS
 - Warn the parents and the agency that failure to comply with the plan is grounds for contempt and of the potential penalties for such contempt, should it occur.
 - Warn the parents that failure to comply with the plan could result in the filing of a petition to terminate parental rights.
 - Warn IDHW that failure to comply with the plan could result in a finding that the agency failed to make reasonable efforts to reunify the family or to finalize a permanent placement for the child.
- ✓ Determine whether further efforts are needed to join essential parties.
- ✓ Determine whether further efforts are needed to ascertain whether the child is an Indian child and/or whether further efforts are needed to give notice as required by the Indian Child Welfare Act (25 USC §§ 1901, *et seq*). If notice has been given and the tribe does not appear, ensure that there is an affidavit of service in the file and make appropriate findings in the decree.
- ✓ Determine whether further efforts are needed to identify, locate, and serve missing parent(s), including putative fathers. (Idaho Code § 16-1611(3) requires notice to each parent). If notice has been given and a parent did not appear, ensure that this is documented in the file and make appropriate findings in the decree. Order paternity testing where appropriate to establish parentage.
- ✓ Enters orders as needed to ensure the progress of the case and to prepare for the next hearing.
- ✓ Schedule the review hearing. Order the parents, the assigned caseworker, and the GAL to attend. Require IDHW to file a written progress report prior to the review hearing. The court may also require the GAL to file a written progress report.
- ✓ Enter transport orders to the review hearing for parents or children in state or local custody.
- ✓ Consult the Educational Needs Benchcard to evaluate the child's or youth's educational progress.



#1 Placement Preference: Reunification

- ✓ The preference for reunification is embodied in Idaho Code §§ 16-1601(1) and 16-1615(5)(b) which require that IDHW make reasonable efforts to prevent removal of the child from the home and/or reunify the child with the family unless aggravated circumstances are found.

Best Practice Recommendation:

If the child is an Indian child consult the ICWA Benchcard before considering permanency options. ICWA imposes preferred placement requirements for Indian children.

#2 Placement Preference: Termination of Parental Rights and Adoption

- ✓ Termination of parental rights is the second most preferred option as it meets all the goals of permanency:
 - It provides the child with a family relationship that will last throughout the child's lifetime, with full and permanent responsibility to the new parents;
 - It is legally secure from modification, and without ongoing state intervention and/or monitoring; and
 - Adoption subsidy benefits are available to assist the adoptive parents and to meet the child's needs.
- ✓ The preference for termination of parental rights and adoption is embodied in two provisions of the Idaho CPA:
 - Where the parent subjects the child to aggravated circumstances or when the child is an abandoned infant, the state is required to file a petition to terminate parental rights (within 60 days of the determination of aggravated circumstances or abandonment) unless there are *compelling reasons* why termination would not be in the child's best interest. Idaho Code § 16-1624.
 - Where a child has been in the custody of the agency for 15 of the last 22 months, the state is required to file a petition to terminate parental rights, unless the court finds that (1) termination is not in the best interest of the child, or (2) reasonable efforts have not been provided to reunite the child with its parents; or (3) the child is placed permanently with a relative. Idaho Code § 16-1629(9).

Best Practice Recommendation:

Adoption should not be dismissed as an option simply because a child is older or has special needs. Adoption subsidies, compacts for interstate placement of children, and other programs, including programs specifically for older children and children with special needs, have greatly increased the number of families who are both willing and able to provide a safe home and a loving family for an older child or a child with special needs. With rare exceptions, there should no longer be children labeled "unadoptable."

January 24, 2007





Permanency Planning Options

- ✓ Guardianship is lower in priority than reunification and termination of parental rights and adoption because it does not achieve most of the aspects of permanency and has some significant disadvantages.
- ✓ In appropriate cases, guardianship can have several advantages over termination of parental rights.
 - It does not affect the child's right to financial benefits from or through the parents, such as child support, inheritance, or social security.
 - It is flexible. The order appointing the guardian can include whatever provisions are appropriate for the child to have continuing contact with either or both parents (to the extent that continuing contact is in the child's best interest) and can be readily modified as circumstances change.
 - Guardianship may offer the potential for an agreed-upon solution that has the active support of all parties and avoids contested termination proceedings. For example:
 - A parent might be threatened by the loss of identity from termination of parental rights, yet be unable or unwilling to fulfill the role of parent. If the threat to the parent's sense of identity is removed, the parent may be supportive of an alternative arrangement that allows the child to develop a parental relationship with the guardian.
 - A family member may be committed to providing the child with a parental relationship through guardianship but may object to adoption, feeling that the guardian's responsibility already arises through the family relationship without the need for termination and adoption.
 - The potential guardian may be willing to take on the challenge of a troubled child, but not willing to take the risk of financial responsibility for the child's negligent or criminal actions.
 - An older child may object to adoption and rebel against an adoptive placement, but may accept the same placement if it is in the form of a guardianship.
- ✓ Guardianship also has significant disadvantages.
 - Guardianship fails to achieve most of the aspects of permanency. It automatically terminates when the child reaches majority, it is subject to modification at any time (which can also mean subject to repeated litigation), and it is subject to ongoing monitoring until the guardianship is terminated.
 - The financial assistance that is available in adoption is NOT available in guardianship. Some assistance is available for guardianships, but it is limited. It is available only when parental rights have been terminated and where there is documented evidence that the child could not be placed for adoption.
 - Most insurances policies that will cover a guardian's child, such as medical insurance, will not cover a ward.
 - A person who is willing to undertake guardianship but is not willing to undertake adoption may be underestimating the responsibilities of guardianship, with damaging consequences to the child if the guardian later decides he or she is no longer willing and able to serve as guardian.
 - Although guardianship may offer the potential for settlement, it is too often used as a quick and easy means to an end, and the placement does not receive the careful scrutiny necessary to ensure that the placement is in the child's best

#3 Placement Preference: Guardianship

Guardianship (con't.)

Practice Note:

ASFA Requirement: Before approving guardianship as the permanent plan for a child, federal law requires that IDHW document, and the court must find, compelling reasons why adoption is not in the best interest of the child. This finding is not required if the guardian is a family member. (This finding is not required if the child is placed in permanent guardianship; however, a guardianship under Idaho's guardianship statute is not a permanent guardianship.) 45 CFR 1355.20(a).

Best Practice Recommendation:

Before selecting this option, careful scrutiny should be made as to the advantages and disadvantages of this placement option in light of the individual circumstances and needs of the child. If guardianship is recommended and selected as the permanent plan for the child, the parties should be prepared to present information and the court should make findings as to why guardianship is more appropriate for the needs of the child than termination of parental rights and adoption. If a guardianship is implemented, it may be appropriate to keep the CPA case open for a period of time and conduct further review hearings, to ensure that the placement is successful and to maintain jurisdiction over the child in case the placement is not successful.

Least Preferred Preference: Long Term Foster Care

- ✓ Long-term foster care is an appropriate option only in limited situations. Long-term foster care may include placement with a foster family, a group home, or a residential facility.
- ✓ There are three types of situations in which long-term foster care may be appropriate:
 - The child is a violent juvenile offender or juvenile sex offender. In such cases, even if a willing family could be found, placement of the child in a family setting would place other family members at risk.
 - The child has such serious and chronic disabilities that the child cannot function in a family setting or requires more care than can be provided in a family setting. In such cases, careful inquiry should be made into the adoption subsidy and other benefits available, not only through child protection services, but through other IDHW programs and through other state and federal programs.
 - Long-term care is part of a transitional living situation to prepare a youth for adulthood. Where long-term foster care with emancipation is the proposed permanency plan, careful inquiry should be made as to why long-term foster care is the most appropriate way of preparing the youth for adulthood and maintaining family ties.

Practice Note:

ASFA Requirement: Before approving long-term foster care as the permanent plan for a child, the agency must document, and the court must find, compelling reasons why adoption, guardianship, or long-term placement with a relative is not in the best interest of the child. 45 CFR 1355.20(a).

Best Practice Recommendation:

Frequent review hearings should be held to ensure that appropriate services are provided to the child and to determine if circumstances have changed so that a more permanent placement can be achieved.





Permanency Planning Options

- ✓ The Interstate Compact on the Placement of Children (ICPC)
 - A child may not be placed out-of-state without a court order. Idaho Code §16-1629(8). Problems arise when the proposed placement for a child is out-of-state. Traditionally, jurisdiction of a state court or state agency ended at the state line. The agency in the other state had no obligation to make pre-placement investigation, to supervise placements, or to provide services to promote the success of the placement. The sending state was not financially or legally responsible for a child placed outside its jurisdiction. There was tremendous risk that a child placed in another state would “fall between the cracks” of the two state systems.
 - The ICPC was enacted in all 50 states and Washington, D.C. to address this problem. Idaho Code § 16-2107. The agency in the sending state must submit a written application to the agency in the receiving state, which decides whether or not to accept the placement. Once accepted, the agencies in the two states can enter into agreements as to what services the agency in the receiving state will provide on behalf of the agency in the sending state. The sending state remains responsible for the cost of the services. The court in the sending state retains jurisdiction over the child and may order the child returned to the sending state.

Best Practice Recommendation:

The court should require that the placement be made in accordance with the ICPC and that the placement agreement specify the services to be provided by the receiving state, including a written report of pre-placement investigations and written reports as to the status and welfare of the child. Because the ICPC process can be time-consuming, it should be implemented as early as possible in the CPA process when an out-of-state placement for a child is contemplated. NOTE that a “courtesy supervision” is NOT an ICPC placement, and has none of the protections of an ICPC placement.

Other Factors

- ✓ Family Relationships
 - Placement with an individual or couple who already have a positive relationship with the child helps to provide the child with a greater sense of safety, security, and continuity. The family is the most likely – but not the only – source for such individuals or couples. In addition, placement with a family member may offer the opportunity for an agreed-upon solution, because a parent may be willing to stipulate to placement of the child if the parent knows that the child will be with a family member.
 - There can, however, be problems with the placement of a child with a family member.
 - Because of the family member’s relationship to the parent, and given the sometimes intergenerational aspects of neglect and abuse, the family member may unduly minimize the extent or the effects of the abuse or neglect, may be partly or primarily motivated by a desire to protect the parent from governmental intervention, or may also have a history of neglecting or abusing children.
 - The family member may underestimate the potential difficulties in providing a home for the child, and may later seek to withdraw as alternative placement for the child when unanticipated problems become apparent.

Best Practice Recommendation:

Potential placements with family members should be scrutinized as carefully as any other potential foster or adoptive placement to ensure the safety of the child and the success of the placement.

Other Factors Con't.

- ✓ Sibling Relationships: A child who has been removed from the parents should not also suffer the loss of being separated from brothers and sisters. Efforts should be made to place the siblings together. However, separate placement of siblings may be necessary where a sibling is at risk of harm from another sibling.

Best Practice Recommendation:

If siblings can't be placed together, then the case plan or permanency plan should address the provisions that can be made so that the siblings can maintain contact with each other.

- ✓ The Indian Child Welfare Act and Other Ethnic/Cultural Issues
 - ICWA has detailed provisions governing preferences for both foster and adoptive placement of Indian children. Priority is given to members of the child's extended family, other members of the child's Indian tribe, or placements given priority by the tribe. One of the purposes of ICWA is to recognize the unique relationship between the United States and the Indian tribes; another purpose is to enable the child to develop and/or maintain the child's ties to his or her cultural heritage. *See* ICWA, 42 USC §§ 1915, 1901, 1902.
 - There is no law establishing similar preferences for other groups, and issues of race, ethnicity, and national and cultural heritage in foster and adoptive placements are highly controversial. The Multiethnic Placement Act of 1994 ("MEPA") as amended, limits the extent to which race, ethnicity, or national or cultural heritage may be considered in placement decisions. 42 USC §1996(b). The purpose of that act was to remove barriers to permanency by prohibiting discrimination against children or prospective parents based on race or national origin. Specifically, the act sought to do away with the practice of "race-matching," which resulted in large numbers of children spending long periods of time in foster care, waiting for prospective parents of the same race or national origin.

General Best Practice Recommendation:

Ultimately, the resolution in any individual case will depend on the individual circumstances of that case. Although preferences may provide useful tools for analysis, the successful placement of the child depends on thorough efforts to identify all possible placements and thorough assessment of the advantages and disadvantages of each placement based on the child's individual needs. IDHW has a best practices manual that identifies the long-term interests of children and the many considerations that should be assessed. In addition, the Idaho Child Protection manual is available at <http://www.isc.idaho.gov/childapx.htm>.





January 24, 2007

12-Month Permanency Hearing

Idaho Code § 16-1622; IJR 46

Purpose

- ✓ The purpose of the 12-month permanency hearing is to approve, modify, or reject the permanency plan and to review the child's current placement. Idaho Code § 16-1622(4); IJR 46.

Best Practice Recommendation:

Open the hearing by explaining the purpose of the hearing in plain language.

When

- ✓ State Law: no later than one year after the date the child was removed from the home or the date the child was found to be within the jurisdiction of the CPA, whichever is first, and every year thereafter. Idaho Code § 16-1622(4).
- ✓ Federal Law: within one year of the date the child entered foster care and at least every year thereafter. The date the child entered foster care is the date the court found the child within the jurisdiction of the CPA or 60 days from the date the child was removed from the home, whichever is first. 45 CFR 1355(20)(a). If the federal deadline is not met, the child will **lose eligibility for federal IV-E funding**. Eligibility may be reinstated once the federal requirements are met. 45 CFR 1356.21(b)(ii), 1355.20(a).

Best Practice Recommendations:

- ✓ Grant continuances only when absolutely necessary, only for a short time, and subject to appropriate orders to ensure that the parties will be ready to proceed on the next court date.
- ✓ Incarceration should not be a basis for continuance – the court can enter a transport order or arrange for the party to appear by phone.

Who Should be Present

- ✓ Judge
- ✓ Parents whose rights have not been terminated, including putative fathers
- ✓ Age-appropriate children
- ✓ Child's tribal custodian, tribe, and tribal attorney, if applicable
- ✓ Foster Parents
- ✓ Assigned IDHW caseworker
- ✓ County Prosecutor or Deputy Attorney General
- ✓ Attorney for parents (separate counsel if conflict warrants)
- ✓ Guardian *ad litem*, attorney for guardian *ad litem*, and/or attorney for child
- ✓ Court reporter or suitable technology, security personnel, and interpreter(s), if applicable

Best Practice Recommendation:

Foster parents are entitled to notice and an opportunity to attend the planning hearing but are not parties to the case. Idaho Code §§ 16-1620, 16-1621. IDHW should be required to notify the foster parents of permanency hearings after a case plan is approved.

The Permanency Plan

- ✓ The plan should:
 - address all options for the permanent placement of the child (refer to the Permanency Planning Options benchcard for more information);
 - address the advantages and disadvantages of each option in light of the child's best interest;
 - identify the option recommended as the child's permanent placement and a deadline for finalizing the permanent placement;
 - if reunification continues to be the primary plan for the child, set a deadline by which reunification will have been successfully achieved, or by which reunification efforts will cease;
 - specifically identify the actions necessary to implement the recommended option; and
 - address options for maintaining the child's connection to his/her community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection.
- ✓ If the child is in foster care, the plan should identify the current foster care placement for the child, including a statement of why that placement is the least disruptive environment that meets the needs of the child. (Refer to the Planning Hearing card or the Permanency Hearing – Aggravated Circumstances card for more information about foster care placement issues.)
- ✓ If the child is in foster care, the plan should identify the services to be provided to the child and the foster family, including services to identify and meet any special medical, educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, and/or to ensure the stability of the placement.
- ✓ The permanency plan should be verified or in the form of an affidavit.

Federal Finding

- ✓ The Court must make a determination that IDHW has made reasonable efforts to finalize the permanency plan that is in effect. This finding is a retrospective review of agency efforts. If the finding is not made in a timely fashion the child will be ineligible for Title IVE funding until the determination is made. 45 CFR 1356.21 (b)(2)(i) & (ii).
- ✓ **This finding must be made within one year of the date the child entered foster care and every twelve months thereafter.** The date the child entered foster care is the date the court found the child within the jurisdiction of the CPA, or 60 days from the date the child was removed from the home, whichever is first. 45 CFR 1355(20)(a). If the federal deadline is not met, the child will **lose eligibility for federal IV-E funding** at the end of the month in which the hearing should have been held or the finding should have been made. Eligibility may be reinstated once the federal requirements are met. 45 CFR 1356.21(b)(ii), 1355.20(a).

Practice Notes:

- ✓ Long-term foster care is the least preferred option for a “permanent” plan for the child. Before approving long-term foster care as the permanency plan, federal law requires that the agency document and the court find compelling reasons why termination of parental rights and adoption, guardianship, or long-term placement with a relative is not in the best interest of the child. 45 CFR 1355.20.
- ✓ There is a rebuttable presumption in favor of termination of parental rights and adoption if a child has been in the custody of IDHW and out of the home for 15 of the last 22 months from the date the child entered foster care. Idaho Code § 16-1629(9). The presumption may be rebutted by a finding of the court that termination of parental rights would not be in the best interest of the child, reasonable efforts have not been provided to reunite the child with the family, or the child is placed permanently with a relative.





12 Month Permanency Hearing

Best Practice Recommendations:

- ✓ The plan, once approved by the court or approved with modifications, should be incorporated in an order. For the 12-month permanency plan order, use the form provided in the Benchguide or found on the Idaho Supreme Court's website: <http://www.isc.idaho.gov/childapx.htm>.
- ✓ In the permanency plan, SPECIFICITY IS EVERYTHING: it provides the road map to successful resolution of the case, it provides the primary mechanism for holding the participants accountable, and it defines "reasonable efforts."
- ✓ Stipulations: Do not approve the permanency plan based solely on the stipulation of the parties. Review the plan to ensure that it is complete and specific.
- ✓ Determine whether further efforts are needed to join essential parties.
- ✓ Determine whether further efforts are needed to ascertain whether the child is an Indian child and/or whether further efforts are needed to give notice as required by the Indian Child Welfare Act 25 USC §§1901 *et seq.* If notice has been given and the tribe did not appear, ensure that there is an affidavit of service in the file, and make appropriate findings in the decree.
- ✓ Determine whether further efforts are needed to identify, locate, and serve missing parent(s), including putative fathers. (Idaho Code § 16-1611(3) requires notice to each parent.) If notice has been given and a parent has not appeared, ensure that this is documented in the file and make appropriate findings in the decree. Order paternity testing where appropriate to establish parentage.
- ✓ Enter orders as needed to ensure the progress of the case and to prepare for the next hearing.
- ✓ Schedule the review hearing. Order the assigned caseworker and the GAL to attend. If reunification continues to be the long-term goal, require the parents to attend. Require IDHW to file a written progress report prior to the review hearing. The court may also require the GAL to file a written progress report.
- ✓ Enter transport orders to the permanency hearing for parents or children in state or local custody.
- ✓ Consult the Educational Needs Benchcard and evaluate the child's or youth's educational progress.



Purpose

- ✓ The purpose of the 30-day permanency hearing is to decide whether to approve, modify, or reject the permanency plan where a child has been determined to be within the jurisdiction of the CPA, *and* aggravated circumstances were found – Idaho Code §§ 16-1619(6)(d) & 16-1620; IJR 44
- ✓ Where aggravated circumstances are found, reasonable efforts to reunify are not required. The purpose of the permanency plan is to 1) provide a systematic analysis of all the options for the child's permanent placement, to ensure selection of the option that best meets the needs of the child; 2) provide the "road map" for prompt, successful, and permanent placement of the child; 3) define "reasonable efforts" to finalize the permanency plan, and 4) provide a mechanism for holding the agency accountable. Idaho Code § 16-1619(6)(d); IJR 44(3)

BEST PRACTICE RECOMMENDATION:

Open the hearing by explaining the purpose of the hearing in plain language

When

- ✓ Within 30 days after the adjudicatory hearing. Idaho Code § 16-1619(6)(d)
- ✓ The agency must file and serve the permanency plan at least five days prior to the permanency hearing. Idaho Code § 16-1629(9)

BEST PRACTICE RECOMMENDATION:

Grant continuances only when absolutely necessary, only for a short time, and subject to appropriate orders to ensure that the parties will be ready to proceed on the next court date

Who Should Be Present

- ✓ Judge
- ✓ Parents whose rights have not been terminated, including putative fathers
- ✓ Child's guardian or other legal custodian, if applicable
- ✓ Assigned caseworker
- ✓ Indian custodian, child's tribe, and tribal attorney
- ✓ County prosecutor or deputy attorney general
- ✓ Attorney for parents (separate attorneys if conflict warrants)
- ✓ Guardian ad litem, attorney for GAL and/or attorney for child
- ✓ Age-appropriate children
- ✓ Foster parents
- ✓ Court reporter or suitable technology, security personnel, and interpreter(s) if applicable

PRACTICE NOTE:

Foster parents are entitled to notice and an opportunity to be heard at the hearing, but are not parties to the case. Idaho Code Idaho Code 16-1620(2); 45 CFR 1356.21(o).





Permanency Hearing: Aggravated Circumstances

The Permanency Plan

- ✓ The Plan should:
 - identify the current foster care placement for the child, including a statement of why that placement is the least disruptive environment that meets the needs of the child;
 - identify the services to be provided to the child and the foster family, including services to identify and meet any special medical, educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, or to ensure the stability of the placement;
 - define the role of IDHW toward each parent, Idaho Code § 16-1620(3);
 - address **all** options for permanent placement of the child (*see* Permanency Planning Options Benchcard for more information);
 - address the advantages and disadvantages of each option, in light of the child's best interest;
 - include recommendations as to which option is in the child's best interest;
 - specifically identify the actions necessary to implement the recommended option, and deadlines for those actions;
 - address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with whom the child has a significant connection, Idaho Code § 16-1620(3);
 - identify further investigation necessary to identify and/or assess other options for permanent placement, to identify actions necessary to implement the recommended placement, or to identify options for maintaining the child's significant connections.
- ✓ The permanency plan should be verified or in the form of an affidavit and should be incorporated into the order.

Practice Notes:

- ✓ If a child is placed in the custody of IDHW, then IDHW decides where to place the child, subject to judicial review. Under both state and federal law, there are substantial questions as to the nature and extent of that review. It is clear, however, that the court may require IDHW to include the child's placement in the case plan, and reject a case plan that includes an inappropriate placement.
- ✓ A child may not be placed out-of-state without a court order. Idaho Code § 16-1620(8). The court should require that any out-of-state placement be made in accordance with the Interstate Compact on the Placement of Children, Idaho Code § 16-2101, *et seq.*
- ✓ The Indian Child Welfare Act, 25 USC § 1901 *et seq.*, establishes preferences in placement for Indian children. If the child is an Indian child, the case plan should include information demonstrating that the placement complies with ICWA.
- ✓ Please refer to the Idaho Child Protection Manual (which can be found on the Idaho Supreme Court's website) for more information about judicial review of agency placement decisions, and compliance with the ICPC and ICWA.

Best Practice Recommendations:

- ✓ The plan, once approved, or approved with modifications, should be incorporated in an order. For the permanency plan order, use the form provided on the Idaho Supreme Court's website: <http://www.isc.idaho.gov/childapx.htm>.
- ✓ In the permanency plan, SPECIFICITY IS EVERYTHING: it provides the road map to successful and permanent placement of the child, it provides the primary mechanism for holding the agency accountable, and it defines "reasonable efforts."
- ✓ Stipulations: Do not approve the permanency plan based solely on the stipulation of the parties. Review the plan to ensure that it is complete and specific
- ✓ Determine whether further efforts are needed to join essential parties.
- ✓ Determine whether further efforts are needed to ascertain whether the child is an Indian child, and/or whether further efforts are needed to give notice as required by the Indian Child Welfare Act, 25 USC §§1901 *et seq.*, If notice has been given and the tribe did not appear, ensure that there is an affidavit of service in the file, and make appropriate findings in the decree.
- ✓ Determine whether further efforts are needed to identify, locate, and serve missing parent(s), including putative fathers. (Idaho Code § 16-1606(c) requires notice to each parent.) If notice has been given and a parent does not appear, ensure that this is documented in the file and make appropriate findings in the decree. Order paternity testing where appropriate to establish parentage.
- ✓ Enter orders as needed to ensure the progress of the case and to prepare for the next hearing.
- ✓ Schedule the review hearing. Order the parents, the assigned caseworker, and the GAL to attend. Require IDHW to file a written progress report prior to the review hearing. The court may also require the GAL to file a written progress report.
- ✓ Enter transport orders for parents (whose rights have not been terminated) or children in state or local custody for the review hearing.





Review Hearings

Idaho Code § 16-1622; IJR 45

January 24, 2007

Purpose

- ✓ To review the progress of the case, monitor compliance with the case plan or permanency plan, and to modify the case plan or permanency plan as appropriate. Idaho Code § 16-1622(3); IJR 45.
- ✓ The court may also determine the applicability of the presumption in favor of termination of parental rights found in Idaho Code § 16-1629(9); IJR 45(4).

Best Practice Recommendation:

Open the hearing by explaining the purpose of the hearing in plain language.

When

- ✓ No later than 6 months after entry of the court's order taking jurisdiction under the CPA and every 6 months thereafter. Idaho Code §16-1622(3).

Best Practice Recommendations:

- ✓ Grant continuances only when absolutely necessary, only for a short time, and subject to appropriate orders to ensure that the parties will be ready to proceed on the next court date.
- ✓ Incarceration should not be a basis for continuance – the court can enter a transport order or arrange for the party to appear by phone.

Who Should Be Present

- ✓ Judge
- ✓ Parents whose rights have not been terminated, including putative fathers
- ✓ Child's guardian or other legal custodian, if applicable
- ✓ Assigned caseworker
- ✓ Indian custodian, child's tribe, and tribal attorney

Best Practice Recommendation:

If the child is an Indian Child, consult the ICWA Benchcard

- ✓ County prosecutor or deputy attorney general
- ✓ Guardian ad litem, attorney for GAL, and/or attorney for child
- ✓ Age-appropriate children
- ✓ Foster parents
- ✓ Court reporter or suitable technology, security personnel, and interpreter(s) if applicable

Best Practice Recommendation:

Foster parents are entitled to notice and a right to be heard at the hearing, but they are not parties to the case. 45 CFR 1356.21(o).

Key Issues →

- ✓ If legal custody of the child is vested in IDHW:
 - Is the foster care placement the least disruptive and most-family like setting that meets the needs of the child? (Refer to the Planning Hearing card or the Permanency Hearing – Aggravated Circumstances Card for more information about foster care placement issues.)
 - What services are being provided to the child and/or the foster family, including services to identify and meet any special medical, educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, and/or to ensure the stability of the placement?
 - Do terms of visitation (including parent and SIBLING visitation) or child support need to be established or modified?
- ✓ As to the reunification portion of the case plan:
 - Have the parents complied with the case plan?
 - Do the services set forth in the case plan or the responsibilities of the parents or other participants need to be clarified or modified due to new information or changed circumstances?
 - Should the child's disposition be modified? (For example, from agency custody to at home under agency supervision, to release from supervision and closure of the case, or from at home under agency supervision to agency custody.)
 - Is the agency making reasonable efforts to rehabilitate the family and eliminate the need for placement of the child?
 - Should reunification continue to be a long-term goal for the child?
 - What time frame should be allowed to achieve reunification?
- ✓ As to the concurrent alternative permanency plan in the case plan or to the permanency plan where reunification is no longer a goal:
 - Does the permanency plan need to be changed due to new information or changed circumstances?
 - Is the agency making reasonable efforts to finalize the permanency plan?
 - What time frame should be allowed to achieve the permanent placement of the child?

Practice Note:

There is a rebuttable presumption in favor of termination of parental rights and adoption if a child has been in the custody of IDHW and out of the home for 15 of the last 22 months from the date the child entered foster care. Idaho Code § 16-1629(9). Idaho Code § 16-1622(2) provides that a party may move the court to modify the case plan if the child's best interest is not being served by carrying out the existing plan.





Review Hearings

Practice Notes:

- ✓ **Contrary to the welfare/best interest and reasonable efforts to prevent placement at review hearings:**
 - If the original disposition was to place the child at home under agency supervision and the child is then placed in custody for the first time at a review hearing, federal law requires the case-specific, documented findings of contrary to the welfare/best interest and reasonable efforts to prevent placement
 - See the Shelter Care Hearing card regarding these findings.
- ✓ **Extended Home Visits.** Where the family is making substantial progress toward reunification, the degree of intervention in the family should decrease, and the disposition should be modified accordingly. For example, where the disposition is to place the child in the custody of IDHW, and the family is making substantial progress toward reunification, the next step may be an extended home visit, then modification of disposition to placement of the child in the home under agency supervision, and finally, closing the case. The extended home visit is a useful intermediate step, as it provides the parents with the opportunity to implement the skills they should have been developing while the child was in agency custody; if problems arise during the extended home visit, the agency may remove the child from the home without prior court order and the extended home visit (or return to state custody) is not considered an additional placement for purposes of federal regulations. Extended home visits must be approved by the Court prior to the visit pursuant to Idaho Juvenile Rule 42. If an extended home visit exceeds 6 months and has not been authorized by the court or if it exceeds the time established as appropriate in the court's order, it is deemed a new placement and the case-specific, documented findings of contrary to the welfare/best interest and reasonable efforts are required. 45 CFR 1356.21(e).

Best Practice Recommendations:

- ✓ For the review hearing order, use the form Review Hearing Order found on the Idaho Supreme Court's website: <http://www.isc.idaho.gov/childapx.htm> . Include any modifications to the case plan, the permanency plan, or the disposition of the child.
- ✓ Schedule a review hearing every three months, unless there is good reason to wait longer before the next review.
- ✓ Require IDHW and the GAL to prepare and file written reports at least five days prior to the review hearing. The reports should be verified or in the form of an affidavit.
- ✓ Determine whether further efforts are needed to join essential parties.
- ✓ Determine whether further efforts are needed to ascertain whether the child is an Indian child and/or whether further efforts are needed to give notice as required by the Indian Child Welfare Act. 25 USC §§1901, *et seq.* If notice has been given and the tribe did not appear, ensure that there is an affidavit of service in the file, and make appropriate findings in the decree.
- ✓ Determine whether further efforts are needed to identify, locate, and serve missing parent(s), including putative fathers. Idaho Code § 16-1611(3) requires notice to each parent.. If notice has been given and a parent does not appear, ensure that this is documented in the file and make appropriate findings in the decree. Order paternity testing where appropriate to establish parentage.
- ✓ Enter orders as needed to ensure the progress of the case and to prepare for the next hearing.
- ✓ Schedule the next hearing, which will be either a review hearing, a 12-month permanency hearing, or both. (A review hearing and the 12-month permanency hearing can be combined.) Order the assigned caseworker and the GAL to attend. If reunification continues to be the long-term goal, order the parents to attend. For a review hearing, order IDHW to file a written progress report prior to the review hearing. For a 12-month permanency hearing, order IDHW to file a permanency plan prior to the permanency hearing. The court may also require the GAL to file a written report.
- ✓ Enter transport orders to the review hearing for parents or children in state or local custody.
- ✓ Consult the Educational Needs Benchmark and evaluate the child's or youth's educational progress.



General Education Information

Enrollment →

- Is the child or youth enrolled in school?
 - ✓ At which school is the child or youth enrolled?
 - ✓ In what type of school setting is the child or youth enrolled (e.g., specialized school?)
- How long has the child or youth been attending his/her current school?
 - ✓ Where is this school located in relation to the child's or youth's foster care placement?
 - ✓ Were efforts made to continue school placement where feasible?
- If currently not in a school setting, what educational services is the child or youth receiving and from whom?
 - ✓ Is the child or youth receiving homebound or home-schooled educational services?
 - ✓ If Yes: How frequently are educational sessions taking place? What is the duration of each session? (e.g., how many hours?)

Provision of Supplies →

- Does the child or youth have appropriate clothing to attend school?
- Does the child or youth have the necessary supplies and equipment (e.g., pens, notebooks, musical instrument) to be successful in school?

Transportation →

- How is the child or youth getting to or from school?
- What entity (e.g., school, child welfare agency) is responsible for providing transportation?

Attendance →

- Is the child or youth regularly attending school?
- Has the child or youth been expelled, suspended or excluded from school this year/ever?
 - ✓ If yes: How many times?
 - ✓ Have proper due process procedures been followed for the expulsions, suspensions or exclusions from school?
 - ✓ What was the nature/reason for the child's or youth's most recent expulsion, suspension or exclusion from school?
 - ✓ How many days of school will the child or youth miss as a result of being expelled, suspended or excluded from school?
 - ✓ If not currently attending school, what educational services is the child or youth receiving and from whom?
- How many days of school has the child or youth missed this year?
 - ✓ What is the reason for these absences?
 - ✓ What steps have been taken to address these absences?
 - ✓ Has the child or youth received any truanancies and, if so, for how many times?

January 24, 2007





Educational Needs Checklist

Performance Level →

- When did the child or youth last receive an educational evaluation or assessment? How comprehensive was this assessment?

Assessments commonly given in Idaho:

- ✓ Idaho Reading Indicator (K-3d grades)
- ✓ Direct Writing Assessment (Grades 5, 7, & 9)
- ✓ Direct Math Assessment (Grades 4,6, & 8)
- ✓ Idaho Alternate Assessment (children in special education)
- ✓ Idaho Standard Achievement Test (Grades 2-10)

- At which grade level is the child or youth currently performing?
 - ✓ Is this the appropriate grade level at which the child or youth should be functioning? If NO: What is the appropriate grade level for this child or youth?
 - ✓ Is there a specific plan in place to help this child or youth reach the appropriate grade level?
- What is the child's or youth's current grade point average? If below average, what efforts are being made to address this issue?
- Is the child or youth receiving any tutoring or other academic supportive services? If YES: In which subjects?

Tracking Education Information

- Does the child or youth have a responsible adult serving as an educational advocate? If YES: Who is this adult?
 - ✓ How long has this adult been advocating for the child's or youth's educational needs?
 - ✓ How often does this adult meet with the child or youth?
 - ✓ Does this adult attend scheduled meetings on behalf of the child or youth? Does s/he schedule regular teacher conferences? Attend school open houses?
 - ✓ Is this adult effective as an advocate for the child's or youth's educational needs?
- If there is no designated educational advocate, who ensures that the child's or youth's educational needs are being met?
 - ✓ Who is making sure that the child or youth is attending school?
 - ✓ Who gathers and communicates information about the child's or youth's educational history and needs?
 - ✓ Who is responsible for educational decision-making for the child or youth?
 - ✓ Who monitors the child's or youth's educational progress on an ongoing basis?
 - ✓ Who is notified by the school if the child or youth is absent (e.g., foster parent, social worker, etc.)?
 - ✓ Who could be appointed to advocate on behalf of the child or youth if his/her educational needs are not being met?

Change in Placement/ Change in School

- Has the child or youth experienced a change in schools as a result of a change in his/her foster care placement? If YES: How many times has this occurred?
 - ✓ What information, if any, has been provided to the child's or youth's new school about his/her academic records and needs?
 - ✓ Did this change in foster care placement result in the child or youth missing any school? If YES: How many days of school did the child or youth miss? Have any of these absences resulted in the child being designated a habitual truant pursuant to Idaho Code § 33-206(2) or in truancy proceedings against parents or guardians pursuant to Idaho Code § 33-207?
- What efforts were made to maintain the child or youth in his/her original school despite a change in foster care placement?

Health Factors

Physical Health →

- Does the child or youth have any physical issues that impair his/her ability to learn, interact appropriately, or attend school regularly (e.g., hearing impairment, visual impairment, etc.)?
 - ✓ If YES: What is the physical issue?
 - ✓ How is this physical issue impacting the child's or youth's education?
 - ✓ How is this need being addressed?

Mental Health →

- Does the child or youth have any mental health issues that impair his/her ability to learn, interact appropriately, or attend school regularly?
 - ✓ If YES: What is this mental health issue?
 - ✓ How is this mental health issue impacting the child's or youth's education?
 - ✓ How is this need being addressed?
- Is the child or youth currently being prescribed any psychotropic medications?
 - ✓ If YES: Which medications have been prescribed?
 - ✓ Has the child's or youth's need for the medication been clearly explained to him/her?
 - ✓ How will the medication effect the child's or youth's educational experience?

Emotional Issues →

- Does the child or youth have any emotional issues that impair his/her ability to learn, interact appropriately, or attend school regularly?
 - ✓ If YES: What is the emotional issue?
 - ✓ How is this emotional issue impacting the child's or youth's education?
 - ✓ How is this need being addressed?
- Is the child or youth experiencing any difficulty interacting with other children or youth at school (e.g., does s/he have a network of friends? Has s/he experienced difficulty with bullying? etc.)?
 - ✓ If YES: What is being done to address this issue?





Educational Needs Checklist

Special Ed. & Services under §504 and IDEA

- If the child or youth has a physical, mental, or emotional disability that impacts learning, has the child or youth been evaluated for Special Education/Section 504 eligibility and services?
 - ✓ If NO: Who will make a referral for evaluation and assessment?
 - ✓ If YES: What are the results of the assessment?
 - ✓ Have assessment results been shared with the appropriate individuals at the child's or youth's school?
- Does the child or youth have an appointed surrogate pursuant to the Individuals with Disabilities Education Act (IDEA) (i.e., child's or youth's birth parent, someone else meeting the IDEA definition of parent, or an appointed surrogate parent)?
 - ✓ If NO: Who can best speak on behalf of the educational needs of the child or youth?
 - ✓ Has the court used its authority to appoint a surrogate for the child or youth?
 - ✓ Has the child or youth's educational decision-maker been informed of all information in the assessment and does that person understand the results?
- Does the child or youth have an Individualized Education Plan (IEP)?
 - ✓ If YES: Is the child's or youth's parent or caretaker cooperating in giving IEP information to the appropriate stakeholders and/or signing releases?
 - ✓ Is the plan meeting the child's or youth's needs?
 - ✓ Does the child's or youth's educational decision-maker agree with the IEP and is that person fully participating in developing the IEP?
- Does the child or youth have a Section 504 Plan?
 - ✓ If YES: Is the plan meeting his/her needs?
 - ✓ Is there an advocate for the child or youth participating in meetings and development of this plan?

Extra-Curricular Activities & Talents

- What are some identifiable areas in which the child or youth is excelling at school?
- Is the child or youth involved in any extracurricular activities?
 - ✓ If YES: In which activities is the child involved?
 - ✓ Are efforts being made to allow the child or youth to continue in his/her extracurricular activities (e.g., provision of transportation, additional equipment, etc.)?
- Have the child's or youth's talents been identified?
 - ✓ If YES: What are these talents?
 - ✓ What efforts are being made to encourage the child or youth to pursue these talents?

Transitioning

- Does the youth have an independent living plan?
 - ✓ If YES: Did the youth participate in developing this plan?
 - ✓ Does this plan reflect the youth's goals?
 - ✓ If YES: Does the plan include participation in Chafee Independent Living services?
 - ✓ Does this plan include vocational or post-secondary educational goals and preparation for the youth?
 - ✓ Is the youth being provided with information and assistance in applying for financial aid, including federally-funded Education and Training Vouchers (see Chafee Foster Care Independence Program)?
- Is the youth near his/her 17th birthday and about to transition out of the foster care system?
 - ✓ If YES: Does the youth have a transition plan?
 - ✓ If YES: What does this transition plan entail?
 - ✓ Did the youth participate in developing the transition plan?
 - ✓ Is this transition plan coordinated with the youth's independent Living plan?

This checklist was originally developed by TeamChild: Advocacy for Youth. Its expansion to a national judicial checklist was made possible through the support of Casey Family Programs. The checklist is published by the National Council of Juvenile & Family Court Judges in *Asking the Right Questions: A Judicial Checklist to Ensure That the Educational Needs of Children and Youth in Foster Care Are Being Addressed* (2005). It is reproduced here and adapted for Idaho with permission.





Required Findings for Federal IV-E Funding

January 24, 2007

Purpose

The Adoption and Safe Families Act (ASFA) requires the court to make certain findings in a certain manner at certain times. **FAILURE TO MAKE THE REQUIRED FINDINGS WILL RESULT IN LOSS OF THE CHILD'S ELIGIBILITY FOR FEDERAL FUNDS (Title IV-E funds).** The following summary includes the applicable federal and state laws and recommended best practices.

What: Continuation of the child in the home is contrary to the welfare of the child or placement of the child in foster care is in the best interest of the child.

When: In the FIRST ORDER sanctioning removal of the child from the home. (the first order could be an endorsement on summons, Rule 16 expansion, shelter care order, adjudicatory decree, or a later order if child is removed at a later date.)
Extended home visits: If an extended home visit exceeds six months and has not been authorized by the court or exceeds the time determined appropriate by the court, then a return to foster care is deemed a new placement, and the case-specific, documented findings of contrary to the welfare/best interest and reasonable efforts are required. 45 CFR 1356.21(e).

How: Case-specific and documented in the court's order. (The order can incorporate an affidavit by reference. If the finding is made on the record but omitted from the order, the omission only can be corrected with a transcript of a hearing in which the necessary case specific findings were made.)

If not: CANNOT BE CORRECTED LATER to make the child eligible for federal funds.

CPA :

- ✓ On filing of petition: Court may issue endorsement on summons if, based on facts presented to the court, it appears that it would be contrary to the welfare of the child to remain in the home and it would be in the child's best interests to vest legal custody of the child with IDHW. Idaho Code §16-1611(4).
- ✓ At shelter care hearing: Court may place a child in shelter care if it is shown that it is contrary to the welfare of the child to remain in the home, and it is in the best interest of the child to be in temporary shelter care pending the adjudicatory hearing. Idaho Code §16- 1615(5); IJR 39(9).
- ✓ At adjudicatory hearing: If the court places the child in foster care, the court shall make detailed written findings based on facts in the record that it would be contrary to the welfare of the child to remain in the home and that placing the child in foster care is in the child's best interest. Idaho Code §16-1619(4) & (6).
- ✓ On expansion of JCA proceeding: The court may expand a JCA proceeding into a CPA and place a juvenile in shelter care if it is in the best interest of the juvenile and needed for the juvenile's protection. IJR 16(b).

Best Practice Recommendation:

Supporting affidavit: the Petitioner should prepare an affidavit with information to support a contrary to the welfare/best interest finding, which, along with the petition should be filed with the court and incorporated by reference in the court's order.

Contrary to the Welfare/ Best Interest

45 C.F.R. §1356.21(c,d)

Reasonable Efforts to Prevent Removal

45 CFR 1356.21(b)(1)

- What:** IDHW made reasonable efforts to prevent the child's removal from the home.
- When:** WITHIN 60 DAYS OF REMOVAL of the child from the home. (This can be done in an endorsement on summons, a Rule 16 expansion order, a shelter care order, or the adjudicatory decree, if the adjudicatory hearing is held within 60 days after the child is removed from the home.) Extended home visits: If an extended home visit exceeds six months and has not been authorized by the court or exceeds the time determined appropriate by the court, then a return to foster care is deemed a new placement, and the case-specific, documented findings of contrary to the welfare/best interest and reasonable efforts are required. 45 CFR 1356.21(e). Extended home visits are governed by IJR 42.
- How:** Case-specific and documented in the court's order. (The order can incorporate an affidavit by reference.) If the finding is made on the record but omitted from the order, the omission only can be corrected with a transcript of a hearing in which the necessary case specific findings were made.
- If Not:** If the finding is not made within 60 days from the date the child was removed from the home, the omission CANNOT BE CORRECTED LATER to make the child eligible for federal funds.
- Exception:** The ONLY exception to the requirement for a finding of reasonable efforts to prevent removal is where the court finds that the parent has subjected the child to AGGRAVATED CIRCUMSTANCES. Normally, a finding of aggravated circumstances would be made at the adjudicatory hearing. 45 CFR 1356.21(b)(3).
- CPA:** **At the shelter care hearing:** The court may place a child in shelter care if it is shown that reasonable efforts to prevent placement of the child in shelter care were made but were not successful or if the child was removed under circumstances posing an imminent danger, the efforts to prevent the child's removal from his/her home were reasonable given that the agency's assessment accurately determined that no preventative services could have been safely offered. Idaho Code §16-1615(5)(b); IJR 39(9).
- At the adjudicatory hearing:** If the court places the child in the legal custody of IDHW, the court shall make detailed written findings based on facts in the record that either (1) reasonable efforts were made but were not successful in eliminating the need for foster care placement of the child; (2) if the child was removed under circumstances posing an imminent danger, the efforts to prevent the child's removal from his/her home were reasonable given that the agency's assessment accurately determined that no preventative services could have been safely offered; (3) reasonable efforts to temporarily place the child with related persons were made but were not successful; or (4) reasonable efforts were not required because the parent subjected the child to aggravated circumstances. Idaho Code 16-1619(6).

Best Practice Recommendations:

- ✓ ASFA requires that in every case the court either make an affirmative finding that reasonable efforts to prevent removal were made or that they were not required due to aggravated circumstances. A finding that reasonable efforts could not be made or were not required due to immediate danger to the child DOES NOT COMPLY WITH ASFA. Instead, the finding should be phrased as follows: "The department's efforts to prevent removal were reasonable given that the department's assessment accurately determined that no preventative services could be safely provided."
- ✓ All orders: Include a case-specific reasonable efforts finding in each order sanctioning removal of the child from the home, including the endorsement on summons, a Rule 16 expansion, a shelter care order, and the adjudicatory decree (unless aggravated circumstances is found).
- ✓ Supporting affidavit: The Petitioner should prepare an affidavit with information to support a reasonable efforts finding, which, along with the petition, should be filed with the court and incorporated by reference in the court's order.





Required Findings for Federal IV-E Funding

Reasonable Efforts To Finalize A Permanency Plan

45 CFR 1356.21(b)(2), 1355.20(a)

- What:** IDHW made reasonable efforts to finalize a permanency plan. (This means reasonable efforts to achieve the current placement objective, whether it is reunification, termination, etc.)
- When:** Within one year from the date the child entered foster care and at least once every twelve months thereafter. The date the child entered foster care is the date the court found the child to come within the jurisdiction of the act (the adjudicatory hearing) or 60 days from the date the child was removed from the home, whichever is first.
- How:** Case-specific and documented in the court's order. (Can incorporate an affidavit by reference. If the finding is made on the record but omitted from the order, the omission only can be corrected with a transcript of a hearing in which the necessary case specific findings were made.)
- If not:** If the finding is not made by the deadline, the child will lose eligibility for federal funds at the end of the month in which the finding should have been made. Eligibility CAN BE REINSTATED once the required finding is made.
- CPA:** **Permanency plan and 12-month permanency hearing:** the court must hold a permanency hearing prior to twelve months from the date the child is removed from the home or from the date the child is found to be within the jurisdiction of the CPA, whichever occurs first. IDHW must file a permanency plan with the court at least five days prior to the hearing. Idaho Code §16-1629(9); IJR 45.

Best Practice Recommendation:

The permanency plan should include information to support a finding that the agency made reasonable efforts to finalize the permanency plan, which can be incorporated by reference in the court's order.



Purpose →

- ✓ Severs all legal familial rights and ties between a child and the birth parents, freeing the child for adoption.
- ✓ After termination, parents are no longer entitled to notice of future court proceedings concerning the child.
- ✓ Termination of parental rights ends the duty to provide continuing child support and the legal right to visit the child.

When →

- ✓ The proceeding should be initiated as soon as possible after IDHW or the court makes a determination that reunification cannot occur;
- ✓ Idaho Code § 16-1624 requires that a termination of parental rights proceeding must be filed:
 - ◆ Within 60 days of a finding of aggravated circumstances (unless there are compelling reasons why termination would not be in the child's best interests, OR
 - ◆ Within 60 days of a finding that an infant has been abandoned;
 - ◆ If the child was abandoned under the Idaho Safe Haven Act, Idaho Code § 39-8205(5) as soon as possible after the 30 day investigation period
- ✓ Under Federal law the state must either file or join in a previously filed termination proceeding if the child has been in custody for 15 out of the most recent 22 months. 42 U.S.C. § 675(5)(F)
- ✓ Hearing may be held no sooner than 10 days after service of notice on parents or guardians OR no later than ten days after last publication of notice.

Best Practice Recommendation

An action to terminate parental rights should not be delayed until an adoptive family is identified – such delays slow permanency for the child.

Where →

- ✓ The court having jurisdiction over the child in a Child Protective Act case has exclusive jurisdiction over an action to terminate parental rights. Idaho Code § 16-2003.

Who →

- ✓ Parent (when termination is sought as to the other parent)
- ✓ Guardian of the person, legal custodian, or other person standing in loco parentis to child
- ✓ IDHW
- ✓ Child's Guardian *ad litem*
- ✓ Any other person with legitimate interest

Practice Note

Costs are payable by petitioner unless the petitioner is the authorized agency. The court can suspend costs for hardship to petitioner or where otherwise appropriate. Idaho Code § 16-2012.





Termination of Parental Rights

Petition

- ✓ Petition must be sworn
- ✓ Petition must contain the following information, pursuant to Idaho Code § 16-2006:
 - ◆ Name and place of residence of Petitioner (parent, authorized agency, guardian, person in loco parentis or person with legitimate interest);
 - ◆ Name of child, gender, date and place of birth, place of child's residence;
 - ◆ Jurisdiction (the court having jurisdiction over the child in a CPA case has exclusive jurisdiction (Idaho Code § 16-2003)
 - ◆ Relationship of the Petitioner to the child (or the fact that no relationship exists);
 - ◆ Names, addresses and dates of birth of both parents (if known);
 - ◆ If the parent is a minor, the names and address of the minor's parents or legal guardian OR next of kin if the minor has no parents;
 - ◆ Grounds for termination (see below – Required State Findings); and,
 - ◆ Person or authorized agency to whom legal custody or guardianship of the child may be transferred

Practice Note

The action to Terminate Parental Rights may be consolidated with an action for adoption if the provisions of both the TPR and adoption statute are met. Idaho Code § 16-1506(4).

Appointments

- ✓ Counsel must be appointed for indigent parents or guardians pursuant to Idaho Code § 16-1611 and 16-2009;
- ✓ The court may appoint a guardian ad litem for the parents or any other party to the action pursuant to Idaho Code § 16-2007;
- ✓ The court may appoint a guardian ad litem for the child pursuant to Idaho Code §§ 16-1614 and 5-306.

Best Practice Recommendation

The counsel and guardians ad litem appointed in the Child Protective Act case should be continued or immediately reappointed.

Notice

How

- ✓ Personal service upon the parents and/or guardian of the child.
- ✓ If reasonable efforts at personal service have been unsuccessful OR if the whereabouts of parents and/or guardians is not known or reasonably ascertainable, the court may order notice by certified or registered mail at the last known address of the person and by publication for 3 consecutive weeks in the newspaper designated by the court as most likely to give notice to the person. Idaho Code § 16-2007.
- ✓ No special method of service is provided for other persons entitled to notice
- ✓ The hearing on the petition may take place no sooner than 10 days after service of notice OR 10 days after the last date of publication

Notice

Who

The following persons who have not signed a consent to termination pursuant to Idaho Code § 16-2005(4) or a Waiver of Notice and Appearance pursuant to Idaho Code § 16-1007(3) are entitled to notice:

- ✓ the petitioner;
- ✓ the child, if he or she is over age 12;
- ✓ the mother of the child;
- ✓ the father or putative father of the child if he
 - is currently married to the mother or was married to the mother at the time she executed a consent to terminate rights or otherwise relinquished the child;
 - has been adjudicated the father of the child prior to the execution of a consent to termination by the mother;
 - has filed notice of the commencement of a paternity action and complied with Idaho Code § 16-1513;
 - is recorded on the birth certificate as the child's father with the knowledge and consent of the mother;
 - is openly living in the same household with the child and holding himself out as the child's father at the time the mother executes a consent or relinquishment;
 - has filed a voluntary acknowledgment of paternity pursuant to Idaho Code § 7-1106
 - has developed a substantial relationship with the child who is more than 6 months old and has taken responsibility for the child's future and financial support pursuant to Idaho Code § 16-1504(2)(a)
 - has developed a substantial relationship with a child under the age of 6 months and has commenced paternity proceedings and complied with Idaho Code § 16-1504(b)
- ✓ the legally appointed guardian of the person or custodian of the child;
- ✓ the guardian ad litem for the child or for any other party.
- ✓ any person standing "in loco parentis to the child" (Idaho Code § 16-2007);
- ✓ the nearest blood relative named in the petition, if service cannot be had on the parent or guardian (Idaho Code § 16-2007)
- ✓ IDHW

Who Should be Present at Hearings

- ✓ the judge who has monitored the case from the first hearing;
- ✓ the child, if of appropriate age;
- ✓ parent(s);
- ✓ attorneys for the parent(s);
- ✓ if an Indian child, the child's tribe, the attorney for the child's tribe, if any, and the Indian custodian;
- ✓ assigned IDHW caseworker(s) (including adoption caseworker);
- ✓ prosecuting attorney or deputy attorney general;
- ✓ guardian ad litem for the child, whether attorney, social worker or other paid non-attorney, or CASA;
- ✓ attorney for the child, when applicable;
- ✓ foster parent(s), and prospective adoptive parent(s);
- ✓ relatives who are caretakers of the child or who are involved in an adoption with contact agreement, when applicable;
- ✓ court reporter or suitable recording technology; and
- ✓ court security and other court staff.





Termination of Parental Rights

Consent to Termination of Parental Rights →

- ✓ Consult special provisions of ICWA if child is an Indian child (*See* ICWA Benchcard & Chapter XI of CP Manual)
- ✓ Indigent parties are entitled to appointment of counsel prior to signing a consent to terminate parental rights.
- ✓ Consent to terminate parental rights pursuant to Idaho Code § 16-2005 must:
 - ◆ be executed using the statutory form prescribed in Idaho Code § 16-2005(4);
 - ◆ be knowing and voluntary;
 - ◆ be witnessed by a district judge, magistrate judge or comparable judicial officer of another state;
 - ◆ if executed in another state, must be the result of a proceeding similar to Idaho's OR be authorized under the laws of that state.
- ✓ Unless the consent is filed by a licensed adoption agency or in conjunction with a petition for adoption the court must hold a hearing.
- ✓ Where the parent whose rights are being terminated is a minor his/her parents (the grandparents of the child) must sign the consent.

Best Practice Recommendations

To evaluate whether a consent is knowing and voluntary ,make the following inquiry:

- ✓ State in your own words why we are here today. Can you read, write and understand English? What was the last grade you finished in school? Have you read the Consent to Terminate your parental rights? Do you understand it? If not, what do you not understand?
- ✓ If you sign this document do you understand that your baby will be put up for adoption? You may not know when or how? You may never know where or with whom your baby will be placed? The law will treat you and your baby as strangers – as if you were never related to each other? You will give up all rights to inheritance? You will have no legal rights or responsibilities for your child from this day forward?
- ✓ Have you talked to people you trust regarding your decision to terminate your parental rights? Who (parents, family, friends or caseworker)? Do they support your decision? How long have you thought about your decision? Have you had enough time to make this decision? Is the decision your own personal decision? Has anyone made promises or threats to you to gain your agreement? Have you received money for this decision?
- ✓ Are you under the influence of any medication, drugs or alcohol at this time? If so does it have any impact on your ability to make a decision?
- ✓ Are you willing to sign this consent? Do you understand that the consent is a final decision and you cannot change your mind? Do you believe your decision is in the best interest of your child and yourself? Why? If you are consenting for financial reasons do you understand that there are funds available from the state to assist you in raising your child?

A Copy of the Order Terminating Parental Rights should be sent to each parent who consents to termination so that they have evidence that their parental rights were actually terminated for purposes such as ending their child support obligations.

Pre- Disposition Investigations

Idaho Code § 16-2008

- ✓ Reports of the pre-disposition investigation must be submitted to the court within 30 days after the petition is filed;
- ✓ If no petition for adoption is filed in conjunction with the petition for termination, or if petition for termination is not filed by a licensed adoption agency, IDHW must file a financial analysis report detailing unreimbursed public funds spent on behalf of the child;
- ✓ If no consent to termination is filed, IDHW must file a report of its social investigation detailing
 - ◆ the circumstances of the petition, investigation, present condition of child and parents,
 - ◆ proposed plans for child
 - ◆ a recommendation and reasons for termination of parental rights
 - ◆ if the parent is disabled, information submitted by the parent regarding whether the use of adaptive equipment or supportive service would enable the parent to continue the parent/child relationship

Hearing

- ✓ Required unless parents execute written consent (Idaho Code § 16-2010);
- ✓ Closed (except for any person requested by those entitled to notice or person judge finds has direct interest in case or work of the court) and confidential.
- ✓ Burden of Proof is clear and convincing evidence

Required State Law Findings

Idaho Code § 16-2005

- ✓ The court must find that termination of parental rights is in the best interest of the child AND that:
 - ◆ the parent has abandoned the child (by willfully failing to maintain a normal relationship including failure to pay reasonable support and have regular personal contact (failure for one year is prima facie evidence of abandonment));
 - ◆ the parent has neglected the child as defined in the CPA (Idaho Code § 16-1602(25)) OR the parent has failed to comply with the court's orders in a CPA case including the case plan and reunification has not occurred within the CPA time frames;
 - ◆ the parent has abused the child as defined in the CPA (Idaho Code § 16-1602(1));
 - ◆ the presumptive parent is not the biological parent of the child;
 - ◆ the parent is unable to discharge her or his parental responsibilities and there are reasonable grounds to believe that the condition will continue for a prolonged period of time and will be injurious to the child's health, morals or well-being; OR
 - ◆ the parent is incarcerated and is likely to remain incarcerated for a substantial period of time during the child's minority.





Termination of Parental Rights

Required State Law Findings

Con't.

- ✓ The court may presume that termination of parental rights is in the best interests of the child where:
 - ◆ the parent caused the child to be conceived as a result of rape, incest, lewd conduct with a minor under the age of 16, or sexual abuse of a minor under the age of sixteen, Idaho Code § 16-1605(2)(a);
 - ◆ the parent has subjected the child to torture, chronic abuse or sexual abuse, has committed murder or voluntary manslaughter of another child or has aided, abetted, conspired or solicited to commit such murder or voluntary manslaughter, or has committed battery which resulted in serious bodily injury to a child, Idaho Code § 16-1605(2)(b); OR
 - ◆ the child is an abandoned infant, Idaho Code § 16-1605(2)(c).
- ✓ The court may grant termination of parental rights where it finds that termination is in the best interests of the parent and the child. Idaho Code § 16-1605(3)

Required Federal Findings

45 CFR 1356.21(b)(2),
1355.20(a)

- ✓ What: IDHW made reasonable efforts to finalize a permanency plan. (This means reasonable efforts to achieve the current placement objective, whether it is reunification, termination, etc.)
- ✓ When: Within one year from the date the child entered foster care, and at least once every twelve months thereafter. The date the child entered foster care is the date the court found the child to come within the jurisdiction of the act (the adjudicatory hearing) or 60 days from the date the child was removed from the home, whichever is first.
- ✓ How: Case-specific and documented in the court's order. (Can incorporate an affidavit by reference. If the finding is made on the record but omitted from the order, the omission can be corrected with a transcript.)
- ✓ If not: If the finding is not made by the deadline, the child will lose eligibility for federal funds. Eligibility CAN BE REINSTATED once the required finding is made.

Best Practice Recommendations

- ✓ After the agency or the court makes a determination that reunification cannot occur, a termination of parental rights proceeding should be filed within 30 days, a trial should be held within 90 days of filing and the court should deliver its decision within 14 days after trial.
- ✓ Courts and parties should fully employ mediation and other pre-trial negotiation methods to voluntarily settle termination of parental rights actions. Courts should order the use of appropriate settlement techniques under IRCP 16.
- ✓ The parties should consider voluntary post adoption contact agreements when negotiating the settlement of termination of parental rights actions, where appropriate.
- ✓ Inform the parents about the Voluntary Adoption Registry if appropriate.



Who May Adopt

- ✓ Any adult who is 15 years older than the adoptee OR who is 25 years of age OR who is adopting a step child (Idaho Code §16-1502).
- ✓ Must have resided in Idaho for prior 6 months (Idaho Code §16-1506).

Petition for Adoption

- ✓ Petition for adoption must be filed by person or persons proposing to adopt. Idaho Code § 16-1506
- ✓ Petition must be filed with the court having jurisdiction over the CPA case unless that court relinquishes jurisdiction.
- ✓ Petition must contain:
 - ◆ The names and addresses of the petitioners
 - ◆ An allegation that the petitioners have resided in the state for six consecutive months preceding the adoption
 - ◆ The name of the child
 - ◆ The name by which the child will be known by if adopted
 - ◆ The relationship of the child to the petitioner, if any
 - ◆ The names of any person or agency whose consent is necessary
 - ◆ An allegation that the interests of the child will be promoted by the adoption (Idaho Code § 16-1507)

Consent to Adoption

Consent to adoption is required from:

- ✓ Child, if he or she is over 12 years of age;
- ✓ Mother of the child;
- ✓ Any man
 - ◆ who is currently married to the mother or who was married to the mother at the time the child was born;
 - ◆ who has been adjudicated the father of the child prior to the execution of a consent to termination by the mother;
 - ◆ is recorded on the birth certificate as the child's father with the knowledge and consent of the mother;
 - ◆ has filed a voluntary acknowledgment of paternity pursuant to Idaho Code § 7-1106;
 - ◆ has developed a substantial relationship with the child who is more than 6 months old and has taken responsibility for the child's future and financial support pursuant to Idaho Code § 16-1504(2)(a); or
 - ◆ has developed a substantial relationship with a child under the age of 6 months and has commenced paternity proceedings and complied with Idaho Code § 16-1504(b);
- ✓ Legally appointed guardian of the person of the child or custodian of the child;
- ✓ Guardian *ad litem* for the child or for any other party; and
- ✓ Spouse of the adopting person.

January 24, 2007





Adoption

Consent to Termination of Parental Rights and Adoption

Idaho Code § 16-1504

- ✓ Consult special provisions of ICWA if the child is an Indian child (*See* ICWA Benchcard & Chapter XI of CP Manual).
- ✓ Indigent parties are entitled to appointment of counsel prior to signing a consent to terminate parental rights.
- ✓ Consent to terminate parental rights pursuant to Idaho Code § 16-2005 must:
 - ◆ be executed using the statutory form prescribed in Idaho Code § 16-2005(4);
 - ◆ be knowing and voluntary;
 - ◆ be witnessed by a district judge, magistrate judge, or comparable judicial officer of another state; and
 - ◆ if executed in another state, must be the result of a proceeding similar to Idaho's OR be authorized under the laws of that state.
- ✓ Unless the consent is filed by a licensed adoption agency or in conjunction with a petition for adoption the court must hold a hearing.
- ✓ Where the parent whose rights are being terminated is a minor, his/her parents (the grandparents of the child) must sign the consent.

Best Practice Recommendations:

To evaluate whether a consent is knowing and voluntary, make the following inquiry:

- ✓ State in your own words why we are here today? Can you read, write, and understand English? What was the last grade you finished in school? Have you read the Consent to Terminate your parental rights? Do you understand it? If not, what do you not understand about the document?
- ✓ If you sign this document do you understand that your child will be put up for adoption? You may not know when or how? You may never know where or with whom your child will be placed? The law will treat you and your child as strangers – as if you were never related to each other? You will give up all rights to inheritance? You will have not legal rights or responsibilities for your child from this day forward?
- ✓ Have you talked to people you trust regarding your decision to terminate your parental rights? Who (parents, family, friends, or caseworker)? Do they support your decision? How long have you thought about your decision? Have you had enough time to make this decision? Is the decision your own personal decision? Has anyone made promises or threats to you to gain your agreement? Have you received money for this decision?
- ✓ Are you under the influence of any medication, drugs, or alcohol at this time? If so, does it have any impact on your ability to make a decision?
- ✓ Are you willing to sign this consent? Do you understand that the consent is a final decision and that once signed, you cannot change your mind? Do you believe your decision is in the best interest of your child and yourself? Why? If you are consenting for financial reasons do you understand that there are funds available from the state to assist you in raising your child?

Who is Entitled to Notice of Adoption

Idaho Code § 16-1506(3)

- ✓ Any person whose consent is required;
- ✓ Any person married to the child's mother at the time she executes her consent to adoption or relinquishes the child for adoption;
- ✓ Any person who has registered "notice of commencement of a paternity action" (regardless of whether they have actually commenced a paternity action or complied with any of the other requirements imposed by the consent provision of the Idaho Adoption statute);
- ✓ Any person who is recorded as the father on the birth certificate with the knowledge and consent of the child's mother;
- ✓ Any person openly living in the same household with the child and who holds himself out to be the father;
- ✓ IDHW is entitled to service of the Petition in all cases involving adoption by third parties and in cases involving stepparent and grandparent adoption when the court orders an investigation. This service of the petition differs from the notice required. Notice might not include the petition itself (as when the names of the birth mother or the potential adoptive parents are not disclosed to the person receiving notice). Idaho Code § 16-1506(3).

Content of Notice

Idaho Code § 16-1505(3)-(8)

- ✓ The notice need not disclose the name of the mother of the child.
- ✓ The notice need not contain the names of the petitioners.
- ✓ The notice must state that the person served must respond within 20 days if they intend to intervene or contest the adoption. If they do not respond, they lose any right to further notice.

Timing, Form & Purpose of Notice

- ✓ Notice may be served immediately after the commencement of the proceeding and must be served at least 20 days before the final "dispositional hearing."
- ✓ Form of notice
 - ◆ If the person's consent is necessary for the adoption, they are entitled to personal service of the notice or, if they cannot be served after reasonable efforts are made, notice may be by certified or registered mail AND publication once a week for three weeks in the most relevant newspaper as determined by the court;
 - ◆ If the person is entitled to notice but his or her consent to the adoption is not required, notice may be by certified mail, return receipt requested, or, if ineffective after two attempts, notice may be by publication, posting, or any other manner of service;
 - ◆ A man who has filed a notice of intent to commence paternity proceedings is entitled to notice by certified mail.
- ✓ Proof of notice on all required persons must be filed with the court before the final dispositional hearing;
- ✓ The sole purpose of the notice is to enable the person receiving notice to provide evidence regarding the best interest of the child. Idaho Code § 16-1505(9).





Adoption

Social Investigation

- ✓ A social investigation of the potential adoptive family and all its members must be conducted prior to the placement for adoption. If the adoption is a stepparent or grandparent adoption, the social investigation is only required if ordered by the court. Idaho Code § 16-1506(3).
- ✓ In exigent circumstances the court may permit a child to be placed with adoptive parent prior to the completion of the social investigation. In such circumstances, the investigation must be initiated within 5 days and completed within 60 days of the placement.
- ✓ In order for the adoption to go forward, there must be a positive recommendation from the investigator.
- ✓ If the social investigation is not conducted by the department, it must nonetheless be submitted to the department for oversight purposes.
- ✓ The petition for adoption must be served on the department in all cases involving adoption by third parties and, in cases involving stepparent and grandparent adoption, when the court orders an investigation. This service of the petition differs from the notice requirement. Notice might not include the petition itself (as when the names of the birth mother or the potential adoptive parents are not disclosed to the person receiving notice).
- ✓ The social investigation shall include reasonably-known medical and genetic information regarding both birth parents and sources of such information as well as reasonably known or available providers of medical care to the natural parents. This information must be made available to the potential adoptive family prior to the entry of an order for adoption.

Hearing

- ✓ The court must conduct a hearing in which it examines all persons appearing before it and any social investigation that is required.
- ✓ The person(s) adopting the child, the child and the spouse of the petitioner (if he or she is a natural parent of the child) must appear at the hearing. Idaho Code § 16-1506(1).
- ✓ The court must find that the interests of the child will be promoted by the adoption. If found, the court must order the adoption.

Best Practice Recommendations:

- ✓ Inform Parent of Voluntary Adoption Registry.

Adoption is discussed in the Idaho Child Protection Manual, available at <http://www.isc.idaho.gov/childapx.htm>



- ✓ To promote permanency for the child by insuring that placements are not disrupted by failure to comply with federal law.
- ✓ To meet the needs of Indian children by insuring that children are not removed from their Indian communities unless there is no other alternative.
- ✓ To assure Indian Tribes' participation in decision-making about and control of the placement of Indian children.

Purpose

Best Practice Recommendation:

Inquire into whether the child is an Indian child at the earliest hearing in every Child Protective Act case, and at every hearing thereafter, until the child's status as an Indian child is confirmed or denied.



- ✓ ICWA applies to any “**child custody proceeding**” involving an “**Indian child.**”
 - A **child custody proceeding** is an action in which the parent cannot demand return of the child. Included are foster care placements, termination of parental rights, pre-adoptive placements, and adoptive placements. 25 U.S.C. § 1903(1)

Best Practice Recommendation:

If the parent or Indian custodian cannot demand immediate return of the child, the proceeding is governed by ICWA.

When ICWA Applies

- A child is an **Indian child** if he or she is a member of a tribe or is *eligible* for membership in a tribe. Tribal membership requirements are determined by each individual tribe as a matter of tribal sovereignty. 25 U.S.C. § 1903(4).

Best Practice Recommendations:

- ✓ Ask the person referring the child, the parents, the Indian custodian, relatives, and the child (if the child is of sufficient age) whether the child is of Indian or native ancestry.
- ✓ Ask the person referring the child, the parents, the Indian custodian, relatives, and the child (if the child is of sufficient age) whether the child is or has been under the jurisdiction of any Tribal Court.



Timing

- ✓ A foster care placement proceeding may not be held until at least ten days after the receipt of notice as required by ICWA; the parents, Indian custodian, and/or tribe are entitled to an additional twenty days upon request. 25 U.S.C. § 1912(a)



Counsel

- ✓ Indigent parent(s) or Indian Custodian(s) have the right to appointed counsel in any removal, placement, or termination proceeding. 25 U.S.C. §1912(b).

January 24, 2007





Indian Child Welfare Act

Notice Requirements of ICWA

25 U.S.C. §§1911 & 1912

- ✓ The child's tribe has the right to notice and the right to intervene in any involuntary foster care or termination of parental rights proceeding involving an Indian child. 25 U.S.C. §1912(a).
- ✓ Notice must also be provided to child's parents and to child's Indian custodian. 25 U.S.C. § 1912(a).
 - An "Indian custodian" is any person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of an Indian child. 25 U.S.C. § 1903(6).
- ✓ Notice must be through registered mail return receipt requested, and must notify the party of the purpose and pendency of the proceeding AND of its right to intervene. 25 U.S.C. § 1912(a).
- ✓ Failure to provide notice is jurisdictional and deprives the court of ongoing authority in the case.
- ✓ If the identity or location of the parent, Indian custodian, and/or tribe cannot be determined, notice should be given to the Secretary of the Interior through the local Area Director of the Bureau of Indian Affairs.

Best Practice Recommendations:

- ✓ The BIA Guidelines suggest that notice to a tribe be provided if any of the following facts are present in a case:
 - A party, tribe, or private agency informs the court that the child may be an Indian child;
 - A public welfare agency discovers relevant information indicating that the child may be an Indian child;
 - The child believes he or she is an Indian child;
 - The child resides or is domiciled in an Indian community or the child's biological parents or Indian custodian is from an Indian community; or
 - An officer of the court has information that child is an Indian child.
- ✓ An expansive approach to notice will assist the court in accurately determining whether the child is an Indian child.
- ✓ Ensure that the court file contains proof of service.

Jurisdiction

- ✓ **Exclusive Jurisdiction** in Tribal Court if:
 - The child is an Indian child; and
 - Domiciled on the reservation.
- ✓ If an Indian Child is currently a **ward of a tribal court**, the tribal court retains **exclusive jurisdiction**, notwithstanding the residence or domicile of the child. 25 U.S.C. §1911(a).
- ✓ **Temporary Jurisdiction** may exist in state court while the child is off the reservation in order to prevent immediate physical damage or harm to the child. Such jurisdiction should terminate immediately when it is no longer necessary to prevent imminent physical damage or harm to the child.

Jurisdiction

Con't.

✓ **Transfer Jurisdiction:**

- Applies in cases involving foster care placements and actions to terminate parental rights
- May be requested by parents, Indian custodian or Indian Tribe
- A state court must transfer the case to tribal court unless it finds that there is good cause not to transfer the case or either parent objects to the transfer.

✓ **Good Cause to Decline Transfer** includes:

- The Indian child's tribe does not have a tribal court as defined by ICWA;
- The proceeding was in an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing;
- The Indian child is over twelve years of age and objects to the transfer;
- The evidence necessary to try the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses; or
- The parents of a child over five years of age are not available and the child has little or no contact with the tribe or members of the tribe.



- ✓ The burden of proof in an ICWA action (not involving termination of parental rights) is clear and convincing evidence.
- ✓ The burden of proof in an ICWA action involving termination of parental rights is beyond a reasonable doubt.
- ✓ The court must find that continued custody with the Indian parents or custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. §1912(d) & (e).

Practice Note:

Under ICWA, unfitness, abandonment, and unstable home environment are not automatic grounds for removal of an Indian child.

- ✓ ICWA requires that the finding of “serious emotional or physical damage to the child” be supported by qualified expert testimony. 25 U.S.C. §1912(e).

Practice Note

A qualified expert must have knowledge of Indian culture and traditions and be capable of giving an opinion on whether a particular Indian child is suffering emotional or physical harm because of his or her specific family situation.

- ✓ The court must find that “active” efforts to provide remedial and/or rehabilitative services to prevent breakup of the Indian family have been unsuccessful. 25 U.S.C. § 1912(d).

Practice Note:

This standard is higher than either the Idaho Child Protective Act standard or the Adoption and Safe Families Act standard and requires “energetic” and culturally relevant services.

Required ICWA Findings





Indian Child Welfare Act

Consent to Disposition of Child

- ✓ To be valid under 25 U.S.C. § 1913, a consent must be:
 - Executed in writing.
 - Recorded before a judge of competent jurisdiction, and
 - Not executed prior to or within ten days after the child's birth.
- ✓ A judge accepting a consent must certify that:
 - The terms and consequences of the consent were fully explained in detail to the parent or Indian custodian.
 - The terms and consequences were fully understood by the parent or Indian custodian in English OR the terms and consequences were interpreted into a language that the parent or Indian custodian fully understood.
- ✓ A parent or Indian custodian may withdraw his/her consent at any time prior to entry of the final decree, and upon such withdrawal, the child must be returned to the parent or Indian custodian. 25 U.S.C. § 1913.
- ✓ After entry of a final decree, a parent may withdraw consent and seek return of the child on the grounds that the consent was obtained through fraud or duress. An adoption that has been in effect for two years may not be invalidated under this provision unless it would be invalid under state law. 25 U.S.C. § 1913.

Placement Provisions

25 U.S.C. § 1915

- ✓ The child must be placed in the “least restrictive setting that most approximates the child's family and that is within a reasonable proximity to the child's home.”
- ✓ A placement is acceptable if it is within the “prevailing social and cultural standards of the Indian community in which the parent or extended family resides” or with which the parent or extended family “maintain social or cultural ties.”
- ✓ In the absence of good cause to the contrary, ICWA imposes the following placement preference in foster care situations, in order of their applicability:
 - A member of the Indian child's extended family (whether Indian or non-Indian);
 - A foster home licensed, approved, or specified by the child's tribe;
 - An Indian foster home licensed or approved by an authorized non-Indian agency; or
 - An institution for children approved by an Indian tribe or operated by an Indian organization and that is suitable to meet the child's needs.
- ✓ In adoptions, ICWA imposes the following placement preferences:
 - A member of the Indian child's extended family,
 - Other members of the Indian child's tribe; and
 - Other Indian families.

Practice Notes:

- ✓ Each tribe establishes the requirements that must be met to be a member of that tribe or to be eligible for membership in that tribe. The tribe's determination of eligibility for membership is final and is entitled to full faith and credit under §1911 of ICWA and federal case law.
- ✓ If a child was not initially identified as an Indian Child or was determined not to be an Indian Child but new information is obtained (at any point while the child remains in an out-of-home placement) that indicates previously unexplored Indian heritage, all ICWA requirement must be applied from that point forward.
- ✓ Where a parent consents to voluntary foster care placement and the parent cannot demand immediate return of the child, ICWA applies.